BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

In the Matter of Vocational Nurse	§	
License Number 185186	§	AGREED
issued to BETH ALISON KIRBY	§	ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of BETH ALISON KIRBY, Vocational Nurse License Number 185186, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 302.402(a)(10) and Section 301.452(b)(3)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on November 11, 2006, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent completed a Vocational Nurse Program at Amarillo College, Amarillo, Texas, on May 24, 2002. Respondent was licensed to practice vocational nursing in the State of Texas on August 1, 2002.

5. Respondent's complete vocational nursing employment history is unknown.

6. On or about November 14, 2003, Respondent plead guilty to the offense of "Assault Causing Bodily Injury," a Class A Misdemeanor, in the County Court at Law No. 1, Randall County, Texas, Cause No. 2003-1220-L. Respondent's guilty plea was deferred and Respondent was placed on Community Supervision for a period of one (1) year, assessed a five hundred dollar ($500.00) fine, and court costs in the amount of two hundred thirty-three dollars ($233.00).

7. On or about March 7, 2004, Respondent was arrested by the Amarillo Police Department, Amarillo, Texas, for the offense of "Public Intoxication," which was a violation of her probation.

8. On September 20, 2004, Respondent was convicted of "Assault Causing Bodily Injury," a Class A Misdemeanor, after violating the terms of her Community Supervision issued on November 14, 2003, in the County Court at Law No. 1, Randall County, Texas, Cause No. 2003-1220-L. Respondent was sentenced to forty-five (45) days confinement in the Randall County Jail, assessed a five hundred dollar ($500.00) fine, and court costs in the amount of two hundred thirty-three dollars ($233.00).

9. On or about October 10, 2006, Respondent under went a forensic psychological evaluation, performed by Dr. Richard Lee Wall, Ph.D., H.S.P. Dr. Wall states that Respondent's insight is limited regarding her responsibility for alcohol abuse and aggressiveness in the two incidents above, and that Respondent tends to minimize her past alcohol abuse, and the anger that appears to be released when she is under the influence. Dr. Wall further states that Respondent minimizes her alcohol use/abuse and the question is raised regarding the extent of her involvement with alcohol abuse. Dr. Wall concludes that the evaluation is strongly indicative that Respondent has a significant substance abuse problem and is in need of substance abuse rehabilitation. On or about October 10, 2006, Respondent underwent a polygraph examination which was administered by Doug Sutton, a licensed polygraph examiner, and disclosed additional occasions of substance abuse and violent outbursts resulting in physical injury to herself.

10. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

11. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violation of Section 302.402(a)(10) and Section 301.452(b)(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §239.11(28)&(29)(A)(i)&(iv).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 185186, heretofore issued to BETH ALISON KIRBY, including revocation of Respondent's vocational license to practice nursing in the State of Texas.

5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of three hundred fifty dollars ($350) payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Board of Nurse Examiners.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Board of Nurse

Examiners of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of Respondent's license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Board of Nurse Examiners, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 14 day of December, 2006.

BETH ALISON KIRBY, Respondent

Sworn to and subscribed before me this 14 day of December, 2006.

SEAL

KARLA ELAINE PACE
NOTARY PUBLIC,
STATE OF TEXAS
My Commission Expires 03-18-2008

Karla Elaine Pace

Notary Public in and for the State of Texas

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby accept and enter the Agreed Order that was signed on the 14th day of December, 2006, by BETH ALISON KIRBY, Vocational Nurse License Number 185186, and said Order is final.

Entered and effective this 22nd day of December, 2006.

Katherine A. Thomas

Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board